

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Express Diagnostics Int'l, Inc.,

NO. C 06-01346 JW

Plaintiff,

**ORDER DIRECTING PLAINTIFF TO
FILE INDIVIDUAL STATEMENT OF
FACTS**

v.

Barry M. Tydings, et al.,

Defendants.

On November 3, 2008, the Court issued an Order Directing Parties to File Joint Statement of Undisputed Facts in preparing for Defendants' various Motions for Summary Judgment current set for hearing on December 12, 2008. (hereafter, "Order," Docket Item No. 264.) In the Order, the Court gave the parties specific instructions with respect to the content and organization of the Joint Statement. The Court also set specific deadlines for each party to submit their individual positions with each other and file them with the Court. On November 12, 2008, Plaintiff filed an Objection to Defendants' Noncompliant Submission in Response to Court's Order. (Docket Item No. 268.) Attached to Plaintiff's Objection was Defendants' initial factual submission in response to the Court's Order. (Id., Ex. 1.)

Having reviewed Plaintiff's Objection, the Court finds that Defendants have failed to comply with the Court's Order. Defendants provided neither the structure nor the content they were directed to produce with respect to the undisputed facts. What content Defendants did provide to Plaintiff, was given in a manner that rendered Plaintiff completely unable to comply with its respective


1 responsibilities pursuant to the Court's Order. Finally, Defendants' factual statement was not filed
2 with the Court, as was also required by the November 3 Order.

3 Since the hearing on Defendants' motions is fast approaching, the Court finds that it needs to
4 keep with the schedule as set forth in the November 3 Order in an effort to bring these motions to a
5 close. Accordingly, the Court acknowledges Plaintiff's objection to Defendants' submission and
6 will address Defendants' deficient response in due course.

7 However, regardless of Defendants' action, the Court directs Plaintiff to prepare a Factual
8 Statement, in which it will identify all facts relevant to the issue of "secondary meaning" of the
9 alleged DrugCheck trademark. Plaintiff shall clearly identify which of those facts it contends are in
10 dispute, and shall direct the Court to evidence in the record in support of each fact cited. Plaintiff is
11 admonished to carefully limit the scope of its submission to the "secondary meaning" issue
12 identified by the Court. Plaintiff shall file its Factual Statement with the Court no later than
13 **November 24, 2008 at 3:00 p.m.**

14 In light of Defendants' failure to conform with the Court's instructions, no further response
15 from Defendants is required.

16
17 Dated: November 18, 2008



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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3 Joseph Lawrence Strabala legal@quantumsi.com
4 Martin H. Orlick mho@jmbm.com
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5
6 **Dated: November 18, 2008**

Richard W. Wieking, Clerk

7
8 **By: /s/ JW Chambers**
9 **Elizabeth Garcia**
10 **Courtroom Deputy**